

CITY OF HUNTINGTON BEACH

MEETING DATE: 2/22/05

DEPARTMENT ID NUMBER: CA-05-07

Council/Agency Meeting Held: _____	City Clerk's Signature _____
Deferred/Continued to: _____	
<input type="checkbox"/> Approved <input type="checkbox"/> Conditionally Approved <input type="checkbox"/> Denied	
Council Meeting Date: 2/22/05	Department ID Number: CA-05-07

CITY OF HUNTINGTON BEACH REQUEST FOR COUNCIL ACTION

SUBMITTED TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS

SUBMITTED BY: KEN SMALL, Police Chief *Ken Small*
JENNIFER McGRATH, City Attorney *Jennifer McGrath*
HOWARD ZELEFSKY, Planning Director *Howard Zelefsky*

PREPARED BY: JENNIFER McGRATH, City Attorney *Jennifer McGrath*
KEN SMALL, Police Chief *Ken Small*

SUBJECT: Moratorium on Medical Marijuana Dispensaries

Ord. No. 3700

RECEIVED
CITY CLERK
CITY OF
HUNTINGTON BEACH, CA

2005 FEB 14 P 4: 36

Statement of Issue, Funding Source, Recommended Action, Alternative Action(s), Analysis, Environmental Status, Attachment(s)

Statement of Issue: Should the City adopt an initial 45-day moratorium on medical marijuana dispensaries?

Funding Source: None.

Recommended Action: Approve and adopt Ordinance No. 3700 with specific findings regarding the detriment to the public's health, safety and welfare.

Alternative Action(s): 1) Do not approve and adopt Ordinance No. 3700.

2) Approve and adopt Ordinance No. 3700 and direct staff to prepare an ordinance permitting medical marijuana dispensing during the initial 45-day moratorium.

Analysis: This issue, adoption of an ordinance providing for a medical marijuana sales moratorium, was considered by six members of the City Council at the February 7, 2005, Council meeting. Five Councilmembers voted in favor of the moratorium; one voted against it. As noted in the staff report that accompanied the Request for Council Action, a four-fifths vote of the full City Council was needed for the ordinance to pass. As there were six members present, five votes constituted four-fifths of those in attendance, but not the requisite four-fifths of the Council necessary for passage of the moratorium. Because of the four-fifths vote, it was announced that the ordinance passed, and the adoption of the ordinance was noted in the minutes. In fact, the proposed moratorium failed to win the

05-07 medical marijuana

2/11/2005 2:36 PM

1

G-1d

REQUEST FOR COUNCIL ACTION

MEETING DATE: 2/22/05

DEPARTMENT ID NUMBER: CA-05-07

minimum votes for passage, as six votes constitutes four-fifths of the Council, not five. As Council and the public have now been given the erroneous impression that there is a moratorium in effect, a new vote should be taken. The following analysis accompanied the February 7, 2005, Request for Council Action and should be considered before this second vote on the issue:

Since the passage of Proposition 215 which allows the use of marijuana for medical purposes and possession of marijuana by caretakers of seriously ill persons who use marijuana, so-called medical marijuana dispensaries have opened throughout the state. These facilities have created adverse impacts on communities that have permitted them. They are not required to be permitted by state law and they are contrary to the Federal Controlled Substance Act. There are currently cases pending before the courts that relate to the status of laws permitting marijuana use for medical purposes. For these reasons, California cities have regulated these "clinics" as well as imposed temporary moratoriums on issuing permits for them. The Chief of Police is recommending a moratorium.

In order to adopt the ordinance and impose the moratorium, the City Council must find that the issuance of permits for medical marijuana dispensaries presents a current and immediate threat to the public health, safety, or welfare, and the approval of such dispensaries would result in that threat to public health, safety, or welfare. In order to be defensible if challenged, this finding must be supported by an adequate factual record. In addition, California Government Code Section 65858 requires a 4/5 vote (affirmative votes) of the legislative body to adopt the moratorium.

The staff supports the adoption of the moratorium for several reasons. California voters approved Proposition 215, which codified into the California Health and Safety Code the The Compassionate Use Act of 1996 ("Act"). The intent of Proposition 215 was to enable people in need of marijuana for medical purposes the ability to obtain and use it without fear of criminal prosecution under limited, specific circumstances.

Some entrepreneurs have used the situation to spawn commercial endeavors to distribute marijuana to those who qualify under the Act. These are not pharmacies in any traditional sense as prescription medicines are controlled by the Federal Food and Drug Administration and in Federal law the use, possession, transportation and distribution of marijuana is specifically illegal. At any rate, the use of marijuana under the Act is not the issue here. At issue here is the location of commercial distribution of marijuana businesses and the potential impacts to the public health, safety and welfare of our community, as well as the potential of violating Federal criminal law in permitting them.

The City of Huntington Beach has not experienced the impacts of medical marijuana dispensaries, as there are none, but other communities have. Law enforcement leaders where marijuana dispensaries were located have discovered:

G-1d.2

REQUEST FOR COUNCIL ACTION

MEETING DATE: 2/22/05

DEPARTMENT ID NUMBER: CA-05-07

Joel Neves, Chief of Police of Roseville related the following impact based on his observations and discussions with involved parties including the owner/operator of the marijuana dispensary.

Street level dealers trying to sell to those going to the dispensary at a lower price.

People are smoking marijuana in public around the facility.

People coming to the community from out of town and out of state to obtain Marijuana.

Marijuana DUI by people who have obtained from dispensary.

At least one burglary attempt into building.

Rich Word, the Chief of Police for the City of Oakland has extensive experience with marijuana dispensaries.

Large criminal element drawn to the dispensary location.

Marijuana dealers who do have a doctor's recommendation are purchasing from the dispensary and then conducting illegal street sales to those who do not have a recommendation.

Street criminals in search of the drugs are robbing medical use patients for their marijuana as they leave the dispensary.

Thefts and robberies around the location are occurring to support the illegal and legal (by State) drug commerce.

Chief Word mentioned that a shoe repair business next door to a dispensary has been severely impacted because of the concentration of criminals associated with the dispensary. The shoe repair business owner is considering shutting down his business.

They had more than 15 total in city, now limited to four by ordinance but control is not very strong. The fines are too small to control a lucrative business.

Most of the crime goes unreported because the users do not want to bring negative publicity to the dispensary.

The dispensaries have an underground culture associated with them. At least one of the dispensaries had a doctor on the premises giving recommendations on site for a fee.

One location was a combination coffee shop and dispensary and marijuana was sold in baked goods and for smoking.

Dispensary management has told the police that they cannot keep the criminal element out.

REQUEST FOR COUNCIL ACTION

MEETING DATE: 2/22/05

DEPARTMENT ID NUMBER: CA-05-07

Several other law enforcement agencies that had experience with marijuana dispensaries.

City of Hayward Acting Police Chief Lloyd Lowe reports the following:

Hayward has three dispensaries total, two legal under local ordinance and one illegal.

They have had robberies outside the dispensaries.

They have noticed more and more people hanging around the park next to one of the dispensaries and learned that they were users in between purchases.

They have problems with user recommendation cards – not uniform, anyone can get them.

One illegal dispensary sold coffee, marijuana and hashish – DA would prosecute the hashish sales and possession violations after arrests were made.

They have received complaints that other illegal drugs are being sold inside of dispensaries.

The dispensaries are purchasing marijuana from growers that they will not disclose.

Chief Lowe believes that the dispensaries do not report problems or illicit drug dealers around their establishments because they do not want the police around.

Hayward Police arrested a parolee attempting to sell three pounds of marijuana to one of the dispensaries.

Hayward has recently passed an ordinance that will make marijuana dispensaries illegal under zoning law in 2006.

Lake County Sheriff Rod Mitchell reports the following:

Lake County has one marijuana dispensary.

The biggest problem is the doctor, close by the dispensary who is known across the state for being liberal in his recommendations to use marijuana for a fee of \$175.

REQUEST FOR COUNCIL ACTION

MEETING DATE: 2/22/05

DEPARTMENT ID NUMBER: CA-05-07

Many "patients" come from hours away and out of state to get a marijuana recommendation from the doctor.

Upper Lake has been impacted by the criminal element coming for the marijuana doctor and dispensary. Citizens report to the Sheriff that the people coming to Upper Lake for marijuana look like drug users.

One quilt shop owner has told the sheriff that she does not feel safe anymore because of the type of people drawn to the marijuana doctor and the dispensary, which are located close together in the very small town.

They also have a notorious marijuana grower who beat prosecution for cultivation by making a medical claim. Law enforcement has taken a hands-off approach even though he is blatantly violating the law.

The marijuana grower has recently claimed to be a church to avoid paying taxes.

City of Fairfax Police Chief Ken Hughes reported:

Fairfax has one marijuana dispensary.
Fairfax has had some problems with patients selling to non-patients.
They have had problems with purchasers from dispensary congregating at a baseball field to smoke their marijuana.
Fairfax police arrested one person who purchased marijuana at the dispensary and then took it to a nearby park where he tried to trade it to a minor for sex.
Fairfax is a very small town and has a low crime rate.

Additionally, there are legal concerns about permitting a use which is contrary to Federal criminal law. The United States Supreme Court addressed the distribution of marijuana through a medical marijuana dispensary in *United States v. Oakland Cannabis Buyers' Cooperative and Jeffrey Jones*, 532 U.S. 483. This case decided in May of 2001 held that distribution of medical marijuana is illegal under the Federal Controlled Substances Act and there is no medical necessity defense allowed under Federal law.

Medical marijuana dispensaries as defined by the cities' current urgency ordinance and the proposed zoning ordinance amendment involve distribution, and as described by all proponents and staff research to date, also involve a commercial transaction of an exchange of money for product. The prohibition of medical marijuana dispensaries is entirely consistent with the Federal Controlled Substances Act and the U. S. Supreme Court decision in the *Oakland Cannabis Buyers'* case which held that distribution of medical marijuana is illegal under the Federal Controlled Substances Act.

REQUEST FOR COUNCIL ACTION

MEETING DATE: 2/22/05

DEPARTMENT ID NUMBER: CA-05-07

Environmental Status: N/A

Attachment(s):

City Clerk's Page Number	No.	Description
7	1.	Ordinance No. 37 00 AN INTERIM ORDINANCE OF THE CITY OF HUNTINGTON BEACH IMPOSING A MORATORIUM ON MEDICAL MARIJUANA DISPENSARIES

RCA Author: SCS

G-1d.6

05-07 medical marijuana

6

2/11/2005 2:36 PM

ATTACHMENT 1

G-1d.?

ORDINANCE NO. 3700

AN INTERIM ORDINANCE OF THE CITY OF HUNTINGTON BEACH IMPOSING A
MORATORIUM ON MEDICAL MARIJUANA DISPENSARIES

WHEREAS, the City Council of the City of Huntington Beach does hereby find, determine and ordain as follows:

SECTION 1. Definitions.

Medical Marijuana Dispensary or Dispensary shall mean any facility or location where medical marijuana is made available to and/or distributed by or to three or more of the following: a primary caregiver, a qualified patient, or a person with an identification card, in strict accordance with California Health and Safety Code Section 11362.5 et seq. A "medical marijuana dispensary" shall not include the following uses, as long as the location of such uses are otherwise regulated by this Code or applicable law:

- a. A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code;
- b. A health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code;
- c. A residential care facility for persons with chronic life threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code;
- d. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code;
- e. A residential hospice, or
- f. A home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code Section 11362.5 et seq.

SECTION 2. The issuance of permits for medical marijuana dispensaries presents a current and immediate threat to the public health, safety, or welfare, and the approval of permits for such facilities would result in that threat to public health, safety, or welfare, and potential violation of Federal law. This finding is based upon evidence received by the City Council that medical marijuana dispensaries have negative, secondary effects in California cities where they exist and upon the determination by the Federal Appellate Court that such dispensaries are not legal under the criminal statutes of the United States.

SECTION 3. A moratorium on the issuance permits for such uses is hereby imposed for a period of 45 days. This moratorium prohibits the establishment of a dispensary as defined herein.

SECTION 4. Pursuant to California Government Code Section 65858(a) and Huntington Beach City Charter Section 501, this interim ordinance shall become effective immediately.

SECTION 5. Nothing in this Ordinance shall preclude the use or possession of marijuana pursuant to California Health and Safety Code Section 11362.5 et seq.

G-1d.8

SECTION 6. This Ordinance is categorically exempt from environmental review pursuant to CEQA Guidelines §15061(b)(3).

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the _____ day of _____, 200 ____.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

2/14/05
Jennifer McGee
City Attorney

REVIEWED AND APPROVED:

Penelope Cullell
City Administrator

INITIATED AND APPROVED:

K. S. [Signature]
Police Chief
2-14-05

G-1d.9

